

STATE OF MICHIGAN
COURT OF APPEALS

HERBERT G. COLLINS,

Plaintiff-Appellant,

v

DIRECTOR, DEPARTMENT OF
CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

June 26, 2003

No. 238611

Muskegon Circuit Court

L.C. No. 01-041050-CZ

Before: Sawyer, P.J., and Meter and Schuette, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the order granting defendant's motion for summary disposition of plaintiff's complaint for declaratory relief and writ of mandamus. We affirm.

Plaintiff argues that the trial court erred in granting defendant summary disposition on the basis of res judicata under MCR 2.116(C)(7). Plaintiff challenged the constitutionality of MCL 791.234(6)(a), (b) and (c). In *Collins v Director, Dep't of Corrections*, 153 Mich App 477; 395 NW2d 77 (1986), this Court held that plaintiff's due process and double jeopardy challenges to the statute were abandoned since no authority was cited. It went on to hold that the statute did not violate the separation of powers doctrine. In *Collins v Dep't of Corrections*, unpublished memorandum opinion of the Court of Appeals, issued September 24, 1996 (Docket No. 168347), this Court held that an amendment to the statute, which extended the time between interviews for parole from two to five years, did not violate the ex post facto clauses of the Michigan and United States Constitutions.

Res judicata is intended to alleviate the cost and vexation of multiple lawsuits, to conserve judicial resources, and to encourage reliance on adjudication. *Pierson Sand and Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). Although it cannot be used to sustain a fraud, *Sprague v Buhagiar*, 213 Mich App 310, 313-314; 539 NW2d 587 (1995), plaintiff's assertion of fraud is unsubstantiated. Res judicata bars litigation in a second action of specific claims actually litigated in a first action, as well as claims arising out of the same transaction that the parties could have litigated. *Dart v Dart*, 460 Mich 573, 586; 597

NW2d 82 (1999). Plaintiff has not raised any legal issues in this case that he could not have presented in his prior cases.

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette